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Nos. 571, 572, 573

In the Supreme Court of the United States

OCTOBER TERM, 1939

LLOYD N. COBBLEDICK, INDIVIDUALLY AND AS VICE PRESIDENT OF COBBLEDICK-KIBBE GLASS COMPANY, A CORPORATION, AND COBBLEDICK-KIBBE GLASS COMPANY, A CORPORATION, PETITIONERS

v.

UNITED STATES OF AMERICA

A. H. BRAWNER, INDIVIDUALLY, AND AS OFFICER AND DIRECTOR OF W. P. FULLER & CO., A CORPORATION, AND W. P. FULLER & CO., A CORPORATION, PETITIONERS

v.

UNITED STATES OF AMERICA

EUGENE PALMUTH, INDIVIDUALLY, AND AS PRESIDENT OF CROWE GLASS COMPANY, A CORPORATION, AND CROWE GLASS COMPANY, A CORPORATION, PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

MOTION BY THE UNITED STATES TO ADVANCE

In the Supreme Court of the United States

OCTOBER TERM, 1939

No. 571

LLOYD N. COBBLEDICK, INDIVIDUALLY AND AS VICE PRESIDENT OF COBBLEDICK-KIBBE GLASS COMPANY, A CORPORATION, AND COBBLEDICK-KIBBE GLASS COMPANY, A CORPORATION, PETITIONERS

v.

UNITED STATES OF AMERICA

No. 572

A. H. BRAWNER, INDIVIDUALLY, AND AS OFFICER AND DIRECTOR OF W. P. FULLER & CO., A CORPORATION, AND W. P. FULLER & CO., A CORPORATION, PETITIONERS

v.

UNITED STATES OF AMERICA

No. 573

EUGENE PALMUTH, INDIVIDUALLY, AND AS PRESIDENT OF CROWE GLASS COMPANY, A CORPORATION, AND CROWE GLASS COMPANY, A CORPORATION, PETITIONERS

v.

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ON PETITION FOR WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

MOTION BY THE UNITED STATES TO ADVANCE

198424—39

The Solicitor General, pursuant to Rule 20, paragraph 3, of this Court, moves that the above entitled causes be advanced for hearing at the earliest date convenient to the Court if the writs of certiorari are granted.

The jurisdiction of this Court has been invoked under Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925 (U. S. C., Title 28, Sec. 347), to review a judgment of the Circuit Court of Appeals for the Ninth Circuit dismissing appeals from an order of a district court entered in the instant cases on the sole ground that the orders were not appealable under Section 128 (a) of the Judicial Code (U. S. C., Title 28, Sec. 225 (a)).

The order here involved denied motions to quash subpoenas *duces tecum* issued to each of the petitioners by a grand jury sitting in the Northern District of California. The subpoenas were issued on November 2, 1939 (R. 8), and the motions to quash were filed on November 7, 1939 (R. 10–13). On November 9, 1939, the District Court overruled the motions (R. 32–33) and on the same day petitioners gave notice of their intention to appeal (R. 43–44). On November 13, 1939, respondent orally moved the Court of Appeals to dismiss the appeals, and arguments of counsel were heard at that time (R. 59). The Court of Appeals, on November 28, 1939, filed its opinion and decree dismissing the appeals (R. 62–66). These cases were docketed in this Court on December 6, 1939.

The grand jury which issued the subpoenas has been in session since July and is now sitting. The documen-

tary evidence sought is required in order that the grand jury may continue with and complete its deliberations.

Respectfully submitted.

ROBERT H. JACKSON,
Solicitor General.

Counsel for petitioners concur in the above motion to advance.

FELIX T. SMITH,
CHALMERS G. GRAHAM,
Counsel for Petitioners.

DECEMBER 1939.

U. S. GOVERNMENT PRINTING OFFICE : 1939.

MEMORANDUM FOR THE U.S.

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UNITED STATES OF AMERICA

ON PETITION FOR WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM ON BEHALF OF THE UNITED STATES

196423—39

The petition for writs of certiorari in the above-entitled cases presents the single question of whether an order denying a motion to quash a subpoena *duces tecum* commanding a person to appear and produce documents before a grand jury is a final decision from which an appeal may be taken pursuant to Section 128 (a) of the Judicial Code (U. S. C., Title 28, Sec. 225 (a)). This question was answered in the negative by the Circuit Court of Appeals for the Ninth Circuit in a single decision dismissing the appeal in each of the present cases (R. 62). That decision is in direct conflict with the decision of the Circuit Court of Appeals for the Second Circuit in the case of *In re Cudahy Packing Co. of Chicago, Ill.*, 104 F. (2d) 658.

It is our view that the decision in the *Cudahy* case is erroneous and that the decision in the instant cases is correct. However, the conflict between the circuit courts of appeals creates confusion on a question of substantial public importance in the administration of justice, and the United States does not oppose issuance of the writs.

For the reasons therein explained, the United States is submitting herewith a motion to advance the cases for argument if the writs of certiorari are granted.

Respectfully submitted.

ROBERT H. JACKSON,
Solicitor General.

DECEMBER 1939.

U. S. GOVERNMENT PRINTING OFFICE 1939